Supreme Court, U.S.
FILED
SEP 16 2002
OFFICE OF THE CLERK

Nos. 01-1118, 01-1119

IN THE

Supreme Court of the United States

JOSEPH SCHEIDLER, ET AL.
Petitioners,

v.

NATIONAL ORGANIZATION FOR WOMEN, INC., ET AL.
Respondents,

OPERATION RESCUE, ET AL.
Petitioners,

v.

NATIONAL ORGANIZATION FOR WOMEN, INC., ET AL.
Respondents.

On Writs of Certiorari to the
United States Court of Appeals for the Seventh Circuit

BRIEF FOR THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS

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BRIEF OF *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS

The Lawyers' Committee for Civil Rights Under Law (the "Lawyers' Committee") respectfully submits this brief as *amicus curiae* in support of the Respondents pursuant to Supreme Court Rule 37.3(a) upon the consent of the parties.[1]

INTEREST OF *AMICUS CURIAE*

The Lawyers' Committee is a non-profit, non-partisan organization founded in 1963 at the request of President John F. Kennedy to involve the private bar in providing legal services to address racial discrimination. The principal mission of the Lawyers' Committee is to secure, through the rule of law, equal justice under law.

Since its inception almost 40 years ago, the Lawyers' Committee has served to secure and protect the civil rights of all citizens, particularly racial minorities who have historically been denied those rights. Those rights, in large measure, have been obtained by groups and individuals engaging in peaceful protests, demonstrations, sit-ins, boycotts, and other forms of constitutionally protected non-violent advocacy and expression. The Lawyers' Committee has sought to protect this process of peaceful change under the law which, at times, has been jeopardized by organized violence and threats of violence. The Lawyers' Committee represented the NAACP in a significant case before this Court, *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886 (1982), in which the Court upheld the constitutionality of non-violent activities of African-Americans organizing or

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[1] This brief was authored by counsel for the *amicus curiae*. No person or entity other than the *amicus curiae*, its members, or its counsel made a monetary contribution to the preparation or submission of the brief.

participating in a boycott against local white businesses to protest policies of racial discrimination.

The Lawyers' Committee has and takes no position in the highly charged debate over abortion rights out of which the facts in this case arise. The interest of the Lawyers' Committee is narrowly focused upon the proper application of RICO and the Hobbs Acts to ensure the balance is maintained between protecting the freedoms of expression central for the advancement of the civil rights of citizens while prohibiting violent conduct that prevents citizens from exercising their rights. The Lawyers' Committee embraces the right of all groups to express their views and to attempt to persuade others to adopt those views. Freedom of expression through peaceful protest activities should not be stifled by the prospect of injunction, punishment or damages under RICO or the Hobbs Act. At the same time, the Lawyers' Committee believes that civil rights and free expression are enhanced, rather than chilled, by the imposition of liability under RICO and the Hobbs Act against those who would use force, violence, and threats of violence, rather than legitimate means of persuasion, to prevent others from engaging in lawful and protected conduct.

The interest of the Lawyers' Committee is therefore to preserve the long-recognized legal distinction between peaceful advocacy and violent intimidation. The Lawyers' Committee believes that the court of appeals below correctly construed RICO and the Hobbs Act to maintain that balance on the facts here presented and therefore urges affirmance of the decision below.

SUMMARY OF ARGUMENT

This case neither requires nor invites any new law regarding the balance of freedom of expression and protection against violence and threats of violent conduct. Contrary to arguments raised by Petitioners, this case does not threaten to undermine legitimate forms of social protest or to blur the line this Court has drawn between protected forms of expression and unprotected violent conduct and threats. This Court's decision in *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886 (1982), ensures that those engaged in social protest will not face liability under RICO, the Hobbs Act, or any other state or federal law for the consequences of constitutionally protected forms of expression.

The protections articulated in *Claiborne Hardware* simply do not, and should not, extend to shelter the conduct at issue here. This record establishes that these Petitioners used repeated acts of violence and threats of violence to impose their views on Respondents and others. Such conduct is not protected expression. The individual defendants in this case were not held accountable simply because of their association with the Pro-Life Action Network ("PLAN"). Rather, they were held accountable because, as high level leaders of PLAN, their publications urging violent conduct were imputable to the organization. Furthermore, they knew of, and actively intended to further, PLAN's violent aims. Whatever constitutional limits might apply to the Hobbs Act, the record here shows that the acts and threats of violence directed against Respondents are plainly unprotected and properly punished as violations of the law.

The court of appeals' construction of the Hobbs Act's proscription against "extortion" was well-grounded in precedent and principles of statutory construction. Like

appeals courts in other circuits, the Seventh Circuit correctly found that intangible rights, including a clinic's right to conduct business, or a patient's right to seek medical services, are protected "property" within the meaning of the Hobbs Act. Petitioners also attempted to "obtain" Respondents' property by forcing or attempting to force Respondents to relinquish their rights though violence or threats of violence. *See, e.g., United States v. Arena*, 180 F.3d 380 (2d Cir. 1999); *Northeast Women's Ctr., Inc. v. McMonagle*, 868 F.2d 1342 (3d Cir. 1989). The court of appeals' construction of the Hobbs Act afforded the necessary protection of Respondents' constitutionally protected rights without abridging, or threatening to abridge in the future, the constitutionally protected right of Petitioners or others to freedom of expression.

Policy considerations also weigh heavily in favor of the application of the Hobbs Act and RICO in this case. Women in certain circumstances and other distinct minorities subject to discrimination are not protected under the Civil Rights Act, and thus are unable to obtain adequate relief under that statute. RICO and the Hobbs Act constitute vital means of guarding the rights of groups lacking other adequate protection under federal law.

The court of appeals' holding that injunctive relief is available in RICO suits by private plaintiffs also should be affirmed. This result is supported by the plain text of the statute and the well-established rule that federal courts retain their inherent equitable authority absent a clear expression of congressional intent to the contrary. Petitioners and the United States as *amicus curiae* argue that a bar against private plaintiffs obtaining injunctive relief should be inferred from the express grant of authority to the Attorney General to seek preliminary injunctive relief. This interpretation, however, is contrary to the terms of RICO's civil remedies provision read as a whole. That provision

expressly confers jurisdiction upon district courts to "restrain violations" and nowhere limits the type of relief available to private plaintiffs. Petitioners' and the United States' proposed construction of the civil remedies provision under RICO would deprive private plaintiffs of the flexible federal remedy intended by Congress.

ARGUMENT

I. THE COURT OF APPEALS' CONSTRUCTION OF THE HOBBS ACT IS CONSISTENT WITH FREEDOM OF EXPRESSION BY GROUPS AND INDIVIDUALS ENGAGED IN SOCIAL PROTEST.

The record here is replete with evidence of incidents in which protestors resorted to violence or threats of violence against person or property to achieve their goals. *See National Org. for Women, Inc. v. Scheidler*, 267 F.3d 687, 694-95 (7th Cir. 2001); *National Org. for Women, Inc. v. Scheidler*, No. 86 C 7888, 1999 WL 571010, at *1-4 (N.D. Ill. July 28, 1999) (describing illustrative events). The court of appeals properly concluded, as a matter of statutory construction and consistent with this Court's First Amendment jurisprudence, that the conduct proved at trial constituted predicate acts of extortion under the Hobbs Act, 18 U.S.C. § 1951, sufficient to render Petitioners liable for violations of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-68 ("RICO").

A. The First Amendment Affords Broad Protection To Groups And Individuals Engaged In Social Protest But Stops Short Of Protecting Violence And Threats Thereof Of The Type Proved Here.

Under the guise of concern with preserving freedom of expression for groups and individuals engaged in social protest, Petitioners urge the Court to adopt a restrictive definition of "extortion" under the Hobbs Act that would shelter any form of protest, no matter how extreme or violent. Petitioners' position ignores the protection afforded to a vast range of non-violent protest activities under this Court's First Amendment jurisprudence. *See National Org. for Women, Inc. v. Scheidler*, 510 U.S. 249, 264 (1994) (Souter, J., concurring) (noting that "legitimate free-speech claims may be raised and addressed in individual RICO cases as they arise...Conduct alleged to amount to Hobbs Act extortion, for example...may turn out to be fully protected First Amendment activity entitling the defendant to dismissal on that basis") (citing *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886 (1982)). The First Amendment simply does not extend to protect the violent conduct that was established in this case.

Freedom of speech under the First Amendment to the United States Constitution is one of the basic tenets upon which our nation was founded and represents the "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open." *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964). In the words of this Court, "expression on public issues 'has always rested on the highest rung of the hierarchy of First Amendment values.'" *Claiborne Hardware Co.*, 458 U.S. at 913 (quoting *Carey v. Brown*, 447 U.S. 455, 467 (1980)). Among the public issues subject to this robust debate, none

is more important than the debate over the contours of our civil rights, including reproductive rights.

Free speech rights guaranteed under the Constitution may be exercised most efficaciously when individuals of like opinions band together. Thus, in *Claiborne Hardware*, the Court stated:

> Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association, as this Court has more than once recognized by remarking upon the close nexus between the freedoms of speech and assembly.

458 U.S. at 908 (internal quotation marks and citation omitted). The Court has protected a broad range of activities associated with social protest, including picketing and peaceful marches and demonstrations. *Id.* at 909; *see, e.g., Edwards v. South Carolina*, 372 U.S. 229, 235-38 (1963) (peaceful march and demonstration); *Martin v. City of Struthers, Ohio*, 319 U.S. 141, 145-49 (1943) (pamphleteering at individuals' homes); *Thornhill v. Alabama*, 310 U.S. 88, 98-99 (1940) (peaceful picketing). The Court also has protected even speech and conduct meant to coerce "through social pressure and the 'threat' of social ostracism," and has recognized that speech on highly charged issues often may become "vituperative, abusive, and inexact." *Claiborne Hardware*, 458 U.S. at 911 n. 46 (citations omitted).

Nonetheless, "'...violence has no sanctuary in the First Amendment, and the use of weapons, gunpowder, and gasoline may not constitutionally masquerade under the guise of 'advocacy.'" *Id.* at 916 (citing *Samuels v. Mackell*, 401 U.S. 66, 75 (1971) (Douglass, J., concurring)); *see also Wisconsin v. Mitchell*, 508 U.S. 476, 484 (1993) ("[A]

physical assault is not by any stretch of the imagination expressive conduct protected by the First Amendment"); *Roberts v. United States Jaycees,* 468 U.S. 609, 628 (1984) ("violence or other types of potentially expressive activities that produce special harms distinct from their communicative impact . . . are entitled to no constitutional protection"). Threats of violence are akin to "fighting words," or speech which threatens clear and immediate danger of violent injury, and are not entitled to First Amendment protection. *See Chaplinsky v. New Hampshire*, 315 U.S. 568, 572 (1942) (finding no protection for "fighting words" that provoke or incite immediate violence); *Schenck v. United States*, 249 U.S. 47, 52 (1919) (finding no protection for speech that creates an immediate panic) ("The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic"). "[T]he reason why fighting words are categorically excluded from the protection of the First Amendment is not that their content communicates any particular idea, but that their content embodies a particularly intolerable (and socially unnecessary) mode of expressing whatever idea the speaker wishes to convey." *R.A.V. v. City of St. Paul, Minn.* 505 U.S. 377, 393 (1992).

It is true that individuals or groups engaged in constitutionally protected forms of social protest occasionally may cross the line between protected expression and unprotected, unlawful conduct. This Court's precedent ensures that First Amendment protections are not automatically forfeited as a result by demanding "precision of regulation" of violence or threats of violence occurring in the context of constitutionally protected activity. *Claiborne Hardware*, 458 U.S. at 916 (citation omitted). More specifically, the First Amendment "imposes restraints on the grounds that may give rise to damages liability and on the

persons who may be held accountable for those damages." *Id.* at 916-17.

Liability only may be imposed for damages "proximately caused by unlawful conduct." *Id.* at 918. As this Court stated clearly in *Claiborne Hardware*, courts must strictly guard against imposing liability for the consequences of non-violent, protected activity, while protecting society from violence and threats thereof. *Id.* By protecting citizens against violent conduct, courts neither restrict nor inhibit free speech or civil protest, which were and remain essential tools in the continuing struggle for civil rights. The sit-ins, boycotts, and other non-violent activities of the 1960s would not be held in violation of RICO or the Hobbs Act, but would be entitled to constitutional protection under *Claiborne Hardware* and other Supreme Court cases.

The First Amendment also prohibits imposition of liability on an individual solely because of his or her association with a group that espouses both legal and illegal aims. *See id.* at 918-19. To hold another liable for association with a group, a plaintiff must establish the defendant's "'...knowing affiliation with an organization possessing unlawful aims and goals, and a specific intent to further those illegal aims.'" *Id.* at 920 (quoting *Healy v. James*, 408 U.S. 169, 186 (1972)).

The court of appeals' construction of the Hobbs Act does not blur the line between protected and unprotected speech and conduct. Nor does it chill the rights of those advocating social causes. The strict criteria articulated in *Claiborne Hardware* were satisfied in this case. Therefore, First Amendment protection was unavailable. Although it is possible that in certain cases RICO or the Hobbs Act might yield to the protection afforded under the First Amendment, this is not such a case.

The record established the pervasive resort to violence and threats of violence by Petitioners and those acting in concert with them. Imposition of liability for the resulting damages was warranted. This case does not involve the unconstitutional imposition of liability based on the mere fact of association. The evidence in the record supports the findings that (1) PLAN itself possessed unlawful goals, as evidenced by newsletters and other publications by the individual defendants, who were high level leaders of PLAN, (2) the individuals defendants, who personally organized and participated in illegal activities, were aware of PLAN's unlawful objectives, and (3) the individual defendants actively intended to further PLAN's illegal goals. *See Scheidler*, 267 F.3d at 703 (7th Cir. 2001) (citing *Claiborne Hardware*, 458 U.S. at 920).

The court of appeals' construction of the Hobbs Act as proscribing the pervasive violent conduct and threats of violence established in the record was consistent with well-established First Amendment principles, poses no threat to free speech rights, and should be affirmed.

B. The Court Of Appeals Correctly Construed The Hobbs Act To Proscribe The Violent, Extortionate Conduct At Issue.

The conduct most likely to lie *within* the scope of the Hobbs Act's proscription against extortion almost always will fall *outside* the bounds of the First Amendment. The Hobbs Act defines extortion as, "the obtaining of property from another, with his consent, induced by wrongful use of *actual or threatened force, violence, or fear* or under color of official right." 18 U.S.C. § 1951(b)(2) (emphasis added). Imposition of RICO liability based on predicate acts of extortion under the Hobbs Act was warranted in this case

because of Petitioners' unlawful use of "actual or threatened" force or violence.

The court of appeals also correctly concluded that the other required elements of predicate extortion were satisfied. Respondents contended that the property taken from them comprised "the class women's rights to seek medical services from the clinics, the clinic doctors' rights to perform their jobs, and the clinics' rights to provide medical services and otherwise conduct their businesses." *Scheidler*, 267 F.3d at 709. The court of appeals, consistent with its own precedent and that in other circuits, concluded that "intangible property such as the right to conduct a business can be considered 'property' under the Hobbs Act." *Id.* (citing *United States v. Anderson*, 716 F.2d 446, 450 (7th Cir. 1983) (right of doctor to continue to perform abortions constituted "property" under Hobbs Act)); *see also United States v. Arena*, 180 F.3d 380, 394 (2d Cir. 1999) (property element satisfied where evidence demonstrated that anti-abortion activists implicated in attacks on abortion clinics "attempted and conspired to cause those facilities to give up those rights [to continue to perform abortions]"); *Northeast Women's Ctr., Inc. v. McMonagle*, 868 F.2d 1342, 1350 (3d Cir. 1989) (right of women's center that provided abortions to continue to operate its business constituted "property" under the Hobbs Act).[2]

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[2] *See also United States v. Hoelker*, 765 F.2d 1422, 1425 (9th Cir. 1985) (property right involved was right to make business decisions free from threats and coercion); *United States v. Zemek*, 634 F.2d 1159, 1174 (9th Cir. 1980) ("The right to make business decisions and to solicit business free from wrongful coercion is a protected property right") (citing *United States v. Santoni*, 585 F.2d 667, 672-73 (4th Cir. 1978) (other citations omitted)); *cf. Carpenter v. United States*, 484 U.S. 19, 26 (1987) (newspaper's interest in keeping confidential and making exclusive use, prior to publication, of contents of column, was "property" within the meaning of federal wire and mail fraud statutes).

The "obtaining" element of predicate extortion under the Hobbs Act was established here as well. Consistent with other courts addressing the issue under similar circumstances, the court of appeals held that "an extortionist can violate the Hobbs Act without either seeking or receiving money or anything else. A loss to, or interference with the rights of, the victim is all that is required." *Scheidler*, 267 F.3d at 709 (citing *United States v. Stillo*, 57 F.3d 553, 559 (7th Cir. 1995) (internal quotation marks omitted); *see also Arena*, 180 F.3d at 394 (dictionary definition of "obtain" includes "attain[ing]...disposal of"; thus, "where the property in question is the victim's right to conduct a business free from threats of violence and physical harm, a person who has committed or threatened violence or physical harm, in order to induce abandonment of that right has obtained, or attempted to obtain property"); *Town of West Hartford v. Operation Rescue*, 915 F.2d 92, 101 (2d Cir. 1990) (Hobbs Act imposes "no requirement that the perpetrator of an extortion receive the benefit of his act").

RICO and the Hobbs Act are important, even vital tools to protect the public from pervasive violent conduct. Petitioners' professed concern that potential RICO or Hobbs Act liability will chill free speech rights is illusory. The conduct shown in this record is prohibited by the Hobbs Act and lacks social value or any entitlement to First Amendment protection. Instead, depriving the government and private litigants of the ability to utilize RICO and the Hobbs Act when other remedies prove inadequate will lead to grave consequences for public safety.

For instance, in *United States v. Arena*, the federal government brought RICO charges, predicated on Hobbs Act extortion, against activists who conspired in butyric acid attacks on two facilities providing abortion services and who intended to carry out more attacks. 180 F.3d at 388-89. The hazardous substance used in the attacks could, and did, cause

health problems and extensive property damage. *Id.* at 385. The federal charges in *Arena* were brought because state criminal proceedings resulted in lenient sentences (five years of probation) "inadequate to vindicate the federal interest in protecting the rights of citizens to obtain reproductive health services free from threats of force and violence." *Id.* at 389. Petitioners here ask the Court to foreclose recourse to a much-needed federal remedy in cases like *Arena* based on their contention, *inter alia*, that protestors who unlawfully damage or destroy property and inflict physical harm on individuals do not "obtain" property within the meaning of the Hobbs Act. *See* Brief for Petitioner (No. 01-1119), at pp. 29-39.

RICO and the Hobbs Act are also particularly important tools for private litigants who may belong to a group not protected by the Civil Rights Act, 42 U.S.C. § 1985(3), which requires "some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action." *Griffin v. Breckenridge*, 403 U.S. 88, 102 (1971). For such groups, RICO and the Hobbs Act often may provide the only adequate remedy available to shelter them from repeated, pervasive violence masquerading as social protest.

II. THE COURT OF APPEALS' HOLDING THAT RICO PROVIDES EQUITABLE REMEDIES FOR PRIVATE PLAINTIFFS IS CORRECT.

As the court of appeals correctly stated, interpretation of the remedial provisions of the RICO statute "begins with the statute's text, and, if the text is unambiguous, [ ] ends there as well." *Scheidler*, 267 F.3d at 695 (citing *Alexander v. Sandoval*, 121 S. Ct. 1511, 1520-21 & n.7 (2001)).

The court of appeals was asked to decide whether Congress in enacting RICO withheld from the federal courts

their customary power to provide equitable relief. The court of appeals' conclusion that the statute plainly provides for private injunctive relief is correct. But even if the text is less clear than it appeared to the court of appeals, Petitioners cannot prevail unless Congress clearly excluded equitable relief. *Califano v. Yamasaki*, 442 U.S. 682, 705 (1979) ("Absent the clearest command to the contrary from Congress, federal courts retain their equitable power to issue injunctions in suits over which they have jurisdiction."). *Accord, Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946) ("Unless a statute in so many words, or by a necessary and inescapable inference, restricts the court's jurisdiction in equity, the full scope of that jurisdiction is to be recognized and applied."); *Scripps-Howard Radio, Inc. v. FCC*, 316 U.S. 4, 11, 17 (1942) ("Congress would not, without clearly expressing such a purpose, deprive . . . [a court] of its customary power . . . . Denial of such power is not to be inferred . . . [from] silence. . .Where Congress wished to deprive the courts of . . . historic power, it knew how to use apt words.").

Close examination of the text of RICO's civil remedies provision, 18 U.S.C. § 1964, yields no evidence that Congress intended to withdraw equitable jurisdiction.

> Section 1964 provides, in pertinent part, that:
>
> (a) The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders . . . .
>
> (b) The Attorney General may institute proceedings under this section. Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions . . . as it shall deem proper.

> (c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee . . . .

Subsection (a) broadly empowers the federal courts to grant injunctive relief to "restrain violations" in actions brought under the RICO statute. This broad authority is not limited by the subsection's text or by legislative history to a governmental claim for relief. *See, e.g.*, H.R. REP. No. 91-1549 (1970), *reprinted in* 1970 U.S.C.C.A.N. 4007, 4034 ("Although certain remedies are set out, the list is not meant to be exhaustive, and the only limit on remedies is that they accomplish the aim set out of removing the corrupting influence and make due provision for the rights of innocent persons.").

Subsection (b) authorizes the Attorney General to institute proceedings "under this section" (*i.e.*, under section 1964), and specifically empowers the government to seek interim injunctive relief. Petitioners, and the United States in its brief *amicus curiae*, suggest that by granting the government authority under subsection (b) to bring actions "under this section," "Congress signaled its intent that the district court's equitable jurisdiction under Section 1964(a) must be invoked by the Attorney General." Brief for the United States as *Amicus Curiae* ("U.S. Br."), at p. 6. This argument, which is based on the Ninth Circuit's opinion in *Religious Technology Center v. Wollersheim*, 796 F.2d 1076 (9th Cir. 1986), is untenable for at least three reasons.

First, this argument ignores private plaintiffs' right to sue under Section 1964. Subsection (c) authorizes suits by private parties and provides for recovery by a successful plaintiff of treble damages, costs, and attorney's fees.

The language of subsection (c) does not bar private plaintiffs from access to the equitable powers accorded the federal courts in subsection (a), either expressly or by a "necessary and inescapable inference." *Porter*, 328 U.S. at 398. Had Congress intended to preclude such relief to private plaintiffs, it easily could have done so. For instance, instead of providing in subsection (c) that any person injured "may sue . . . *and* shall recover threefold the damages . . .," Congress could have provided that a plaintiff "may sue . . . *to* recover threefold the damages . . . ." By changing a single word, Congress would have made clear that private plaintiffs were limited to damages, costs and fees. To the contrary, the actual language establishes that those remedies are accorded to private plaintiffs *in addition to* the general equitable relief provided for in subsection (a).

Second, Petitioners and the United States overlook the real purpose of the language in subsection (b) empowering the government to file suit "under this section." As the Seventh Circuit found in *United States v. Cappetto*, 502 F.2d 1351 (7th Cir. 1974), the inclusion of specific authorization for government equity suits in section 1964 was intended to eliminate dispute about the scope of the Attorney General's authority to seek equitable relief. Under traditional rules of equity, the government's request for an injunction was subject to the requirement that it establish irreparable injury or inadequacy of remedy at law. Section 1964 removed these requirements:

> It was plainly the intention of Congress in adopting Section 1964 to provide for injunctive relief against violations of Section 1962 without any requirement of a showing of irreparable injury other than the injury to the public which Congress found to be inherent in the conduct made unlawful by Section 1962. It is also obvious that Congress did not intend to require a showing of inadequacy of remedy at law.

Id. at 1358-59.

Third, Petitioners' construction creates absurd results. If authorization for injunctive relief is limited to subsection (b)'s express allowance of the Attorney General to seek *preliminary* injunctive relief, then no one, not even the Attorney General, would be authorized to seek the *permanent* injunctive relief that Congress contemplated in subsection (a).[3] The patent absurdity of such a result -- which would allow federal courts to award damages in racketeering cases but would foreclose them from permanently enjoining racketeering activity -- demonstrates that the court of appeals' construction of the remedial provision is correct.

In the face of the clear language of section 1964, Petitioners and the United States in its brief *amicus curiae* offer a policy argument, asserting that this Court should limit private RICO plaintiffs to monetary remedies lest it "arm private litigants with far-reaching and novel equitable remedies." Brief for Petitioners (No. 01118), at p. 48. *See also* U.S. Br., at pp. 14-15. But this argument misunderstands the consequences of denying private plaintiffs equitable relief under RICO.

Because of the nature of the predicate offenses that must be proven to satisfy RICO's pattern of racketeering requirement, most conduct actionable under RICO also is actionable under state criminal statutes. As a consequence, a federal court exercising pendant jurisdiction over parallel

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[3] The Ninth Circuit's opinion in *Wollersheim* errs on this point. As the court of appeals noted in *Scheidler*, contrary to the Ninth Circuit's statement that section 1964(b) "explicitly 'permits *the government* to bring actions for equitable relief,'" that section "specifically mentions only *interim* remedies." 267 F.3d at 696-97 (emphasis in original) (quoting *Wollersheim*, 796 F.2d at 1082).

state claims could provide equitable relief to a RICO private plaintiff. That equitable relief, however, would be provided pursuant to a body of state law that Congress has already found to be inadequate to address RICO-type claims. *United States v. Turkette*, 452 U.S. 576, 586 (1981) (Congress enacted RICO because existing "state and federal [law] was not adequate"). Furthermore, the types of equitable relief available under state law vary from state to state. Therefore, a federal court might find that the form of injunctive relief it believes most appropriate in a case is unavailable under applicable state law. In contrast, a federal court granting private equitable relief under RICO is accorded wide discretion under section 1964(a) to shape its relief to meet any situation it might face. *See* G. Robert Blakey & Scott D. Cessar, *Equitable Relief Under Civil RICO: Reflections on Religious Technology Center v. Wollersheim: Will Civil RICO be Effective Only Against White-Collar Crime?*, 62 Notre Dame L. Rev. 526, 558-59 (1987).

The court of appeals' holding that the plain language of RICO's remedial provision permits private injunctive relief is correct.

CONCLUSION

For the foregoing reasons, the Lawyers' Committee for Civil Rights Under Law, as *amicus curiae*, respectfully submits that the judgment of the United States Court of Appeals for the Seventh Circuit should be affirmed.

Respectfully submitted,

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SEPTEMBER 16, 2002